

UNITED STATES DISTRICT COURT  
DISTRICT OF OREGON  
PORTLAND DIVISION

TWILA M. TREJO-GUERRERO, )  
 )  
Plaintiff, ) No. 03:12-CV-01895-HU  
 )  
v. )  
 )  
CAROLYN W. COLVIN, )  
Commissioner of Social Security, )  
 )  
Defendant. )

**ORDER ON MOTION FOR  
ATTORNEY FEES**

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Attorney for Plaintiff

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Attorneys for Defendant

1 HUBEL, Magistrate Judge:

2       On January 6, 2014, the parties filed a stipulated motion for  
3 an award of attorney's fees to the plaintiff pursuant to the Equal  
4 Access to Justice Act, 28 U.S.C. § 2412 ("EAJA"). Dkt. #21. On  
5 January 21, 2014, I denied the motion without prejudice, noting the  
6 motion was "wholly unsupported." In my order, I quoted the EAJA,  
7 which requires that a motion for EAJA fees include "an itemized  
8 statement from any attorney . . . representing or appearing on  
9 behalf of the party stating the actual time expended and the rate  
10 at which fees and other expenses were computed." 28 U.S.C.  
11 § 2412(d) (2) (B).

12       The statute also requires the party seeking fees to "allege  
13 that the position of the United States was not substantially  
14 justified." *Id.* Although such an allegation may, by implication,  
15 be relieved by the Government's stipulation to an award of EAJA  
16 fees, a fee stipulation by the parties does not relieve the court  
17 of its independent duty to review a plaintiff's fee request for  
18 reasonableness. *See Comm'r, I.N.S. v. Jean*, 496 U.S. 154, 158, 110  
19 S. Ct. 2316, 2319, 110 L. Ed. 2d 134 (1990) (observing that fee  
20 applications under the EAJA must be "supported by an itemized  
21 statement"); *Hensley v. Eckerhart*, 461 U.S. 424, 433, 103 S. Ct.  
22 1933, 1939, 76 L. Ed. 2d 40 (1983) (observing that "[t]he most  
23 useful starting point for determining the amount of a reasonable  
24 fee is the number of hours reasonably expended on the litigation  
25 multiplied by a reasonable hourly rate," which requires the party  
26 seeking a fee award to "submit evidence supporting the hours worked  
27 and rates claimed"); *see also Frederick v. Comm'r, Soc. Sec.*, slip  
28 op., 2013 WL 3929973, at \*1 (W.D. Mich. July 29, 2013) (noting the

1 6th Circuit "has cautioned lower courts against 'rubber stamping'  
2 EAJA fee applications"; quoting *Begley v. Sec'y, Health & Human*  
3 *Servs.*, 966 F.3d 196, 200 (6th Cir. 1992)).

4 This court takes seriously its duty to determine the  
5 reasonableness of any fee request, including one under the EAJA.  
6 In a case involving judicial review of an application for  
7 disability benefits, the amount of EAJA fees awarded may reduce the  
8 plaintiff's ultimate attorney's fee obligation if fees later are  
9 awarded under 42 U.S.C. § 406(b). As such, the award of EAJA fees  
10 directly impacts the benefits ultimately payable to the plaintiff.

11 However, despite this court's prior order, the plaintiff's  
12 attorney has resubmitted his motion for EAJA fees without an  
13 itemized statement of his time expended in the case. Dkt. #23. In  
14 a declaration, counsel states the "*Defendant* was presented with the  
15 hours Plaintiff's attorney expended on the appeal, considered the  
16 attorney fee hourly rate allowed by EAJA related to the hours  
17 expended, and stipulated to an attorney fee amount of \$5,906.40."  
18 Dkt. #24, ¶ 4 (emphasis added). Although the parties are bound by  
19 stipulations on issues of fact, the legal effect of a fact is to be  
20 determined by the court, and is not the proper subject of a  
21 stipulation. See, e.g., *Gresham & Co. v. United States*, 470 F.3d  
22 542, 551 (Ct. Cl. 1972).

23 The plaintiff's attorney further claims he has resubmitted his  
24 motion "consistent with the local rules and the practice of this  
25 court." Dkt. #24, ¶¶ 5 & 6. Nowhere in the court's Local Rules is  
26 an attorney relieved of the obligations of complying with statutory  
27 requirements in connection with a motion for EAJA fees. As far as  
28 "the practice of this court," other active members of the Social

1 Security bar routinely submit time records with motions for EAJA  
2 fees, whether stipulated or not, and the undersigned routinely  
3 denies unsupported EAJA fee applications that do not contain proper  
4 support.

5 Accordingly, the plaintiff's resubmitted motion for EAJA fees  
6 (Dkt. #24) also is **denied**, without prejudice to refiling in proper  
7 form, **no later than February 24, 2014**. Any resubmittal of the  
8 motion without proper support will be subject to denial *with*  
9 prejudice for failure to comply with an order of the court.

10 IT IS SO ORDERED.

11 Dated this 14th day of February, 2014.

12 /s/ Dennis J. Hubel

13 \_\_\_\_\_  
14 Dennis James Hubel  
Unites States Magistrate Judge